

82-1102

No.

Supreme Court, U.S.
FILED

DEC 30 1982

ALEXANDER L. STEVAS
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

JOSEPH MICHAEL GREY,
Petitioner

v.

CITY OF PHILADELPHIA,
PHILADELPHIA POLICE DEPARTMENT,
ROLAND LUCIER, THOMAS WHALEN,
AND PERRY PRESSMAN,
Respondents

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

JOSEPH M. GREY,
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QUESTION PRESENTED

Whether the plaintiff-petitioner can be heard at a trial under original jurisdiction in the Federal District Court, due to the fact he was unlawfully arrested and detained by 3 uniformed policemen-defendants who were employed by the defendant, City of Philadelphia, who deprived him of his Fourth Amendment rights, pursuant to the jurisdictional statement contained in 28 U.S.C. § 1343 (3) as stated in his amended complaint which was granted by the District Court?

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The Petitioner, Joseph Michael Grey, respectfully prays that a Writ of Certiorari be granted to review the judgment of the Third Circuit Court of Appeals entered in this proceeding on October 15, 1982.

OPINIONS BELOW

The judgment of the United States Court of Appeals for the Third Circuit, denying the Petition for Rehearing En Banc, (unpublished), appears in the Appendix at A-14. The judgment of the United States Court of Appeals for the Third Circuit, affirming the judgment of the United States District Court for the Eastern District of Pennsylvania, (unpublished), appears in the Appendix at A-12. The judgment of the United States District Court for the Eastern District of Pennsylvania, granting defendants' motion for summary judgment and dismissing plaintiff's complaint, (unpublished), appears in the Appendix at A-11.

JURISDICTION

Petitioner invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1254 (1). The date of the judgment of the Third Circuit Court of Appeals denying the Petition for Rehearing En Banc, sought to be reviewed, was on October 15, 1982 which was also the date of entry on the official docket.

CONSTITUTIONAL PROVISIONS AND STATUTES

The text of the Constitutional Provisions and Statutes cited below can be found in the Appendix at A-16 and A-17.

U.S. Constitution: Fourth Amendment
U.S. Constitution: Fourteenth Amendment
28 U.S.C. § 1331
28 U.S.C. § 1343 (a) (3)
Federal Rules of Civil Procedure: Rule 12 (b)
(6)

STATEMENT OF THE CASE

BASIS FOR FEDERAL JURISDICTION IN THE
UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

Title 28 U.S.C. § 1343 (a) (3) provides that:

"[T]he district courts shall have original jurisdiction of any civil action authorized by the law to be commenced by any person... (3) To redress the deprivation, under color of any State law, ...of any right, privilege or immunity secured by the Constitution of the United States. . ."

The Fourth Amendment to the U.S. Constitution provides that:

"[T]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . ."

In this case, the petitioner's Fourth Amendment rights were violated by 3 uniformed Philadelphia policemen, and he sought monetary damages for such violation in the Federal Court pursuant to 28 U.S.C. § 1343 (a) (3), since the policemen acted under color of State law.

FACTS MATERIAL TO THE
CONSIDERATION OF THE
QUESTION PRESENTED

This case has its origin in an arrest and detention carried out during the early morning hours of April 23, 1977 from 12:30 A.M. to 2:45 A.M.. Petitioner's complaint (A-1 to A-8 of the Appendix) alleges on that day, respondents, 3 uniformed policemen, employed by the City of Philadelphia and empowered by the laws of the Commonwealth of Pennsylvania, accosted him on the street in front of his home using abusive and threatening language, while demanding to see his identification, as he was lawfully standing on the street. The complaint further stated that the plaintiff-petitioner suffered some physical pain while being grabbed and unnecessarily restrained by one of the policemen, even though he did not resist in any way and reluctantly showed the policemen his identification in the form of his car registration card. The petitioner was then taken against his will to a police station

and detained there for about 2 hours. He was released at about 2:45 A.M. and made to walk nearly 3 miles back to his home in the wee hours of the morning, since no transportation was available due to a strike in the City, and the policemen refused to drive him back to his home.

On August 1, 1977, the petitioner brought suit in Federal District Court. In addition to the allegations above, his complaint asserted that the arrest and detention were effected without a warrant and with no criminal charges placed against him, and that unreasonable force was employed in making the arrest; fairly read, it alleges as well that the arrest was made without probable cause. After the arrest, the petitioner acquired the official public record of the incident which stated untrue libelous matter concerning the petitioner and the arrest. It stated, inter alia, that the petitioner "...was taken to 26th Police District for investigation. Mr. Grey appears to be paranoid, has a persecution problem. He explained his problem to police and was re-

released." Petitioner claimed to have suffered great humiliation, embarrassment and mental suffering as a result of the policemen's unlawful conduct, and sought \$500,000. in compensatory damages and \$500,000. in punitive damages from the City of Philadelphia, their employer, and the 3 named policemen defendants.

The defendants filed their motion to dismiss the complaint on September 12, 1977, whereupon the plaintiff filed his response and his amended complaint appearing at A-1 to A-8 of the Appendix. Judge Becker denied defendants motion to dismiss, appearing at A-10 of the Appendix, on April 3, 1978, which was also the same day Judge Becker granted plaintiff's amended complaint, appearing at A-9 of the Appendix.

As this law suit progressed, pretrial discovery was completed, and the District Court Judge ordered the parties to file their pretrial memoranda which the defendants refused to do. The District Court Judge indicated that a trial on the merits would pro-

ceed shortly after a pretrial conference in the District Court Judge's chambers in 1981. Shortly thereafter, defendants-repondents filed a motion for summary judgment on July 14, 1981 which was basically a carbon copy of their initial motion to dismiss which had been denied back in 1978. This new motion for summary judgment was granted on August 4, 1981, appearing at A-11 of the Appendix, which dismissed the entire complaint as it then stood in the form of the amended complaint (A-1 to A-8). The District Court's dismissal of the complaint on a weak summary judgment motion was totally unreasonable and manifestly unjust. The plaintiff-petitioner then appealed that decision of the District Court to the Third Circuit Court of Appeals, wherein the District Court judgment was affirmed at A-12 of the Appendix without any opinion or reason given by the Third Circuit. The petitioner then filed his petition for rehearing en banc with the Third Circuit which was denied, without any opinion given

either for the denial (A-14 of the Appendix). It should also be noted by this Court that the same District Court Judge Becker was appointed to the Third Circuit shortly after the petitioner appealed to the Third Circuit for review of the District Court judgment.

REASONS RELIED ON FOR GRANTING THE WRIT

THE THIRD CIRCUIT COURT OF APPEALS HAS DECIDED A QUESTION OF IMPORTANCE IN A WAY THAT CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT AND HAS SANCTIONED THE DEPARTURE BY THE DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS.

With respect to jurisdiction in the district court, the court must view well pleaded material allegations of the complaint in light most favorable to plaintiff with his alleged facts accepted as true pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. This Court has ruled in Bell v. Hood, 327 U.S. 678, 684, 66 S.Ct. 773, 777, 90 L.Ed.2d 939 (1946), that when legal rights have been invaded and a federal statute provided a general right to sue for such

invasion, federal courts may use any available remedy to make good the wrong done. A remedy is available to the petitioner in the district court for deprivation of his Fourth Amendment rights by the policemen defendants-respondents acting under color of State law by virtue of 28 U.S.C. § 1343(a)(3) and is available against States by virtue of the due process clause of the Fourteenth Amendment. Wolf v. Colorado, 338 U.S. 25 (1949); Ker v. California, 374 U.S. 23 (1963) and Terry v. Ohio, 392 U.S. 1, 16 (1968).

Fourth Amendment violations by federal agents were actionable by a plaintiff for money damages as in Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics, 403 U.S. 388, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). In Gerstein V. Pugh, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54, on remand 511 F.2d 528 (1975), this Court decided there was no bar to claims for federal relief for warrantless arrest. The petitioner in this case was arrested with-

out a warrant and should be granted federal remedy. This case is a substantial violation of petitioner's Fourth Amendment rights, and it was previously decided by this Court that substantiality of a constitutional question is relevant in determining jurisdiction under 28 U.S.C. § 1343 (3) in Finch v. Weinberger, 425 U.S. 967, 96 S.Ct. 2162, 48 L.Ed.2d 791, (1976). Furthermore, Kenosha v. Bruno, 412 U.S. 507, 93 S.Ct. 2222, 37 L.Ed.2d 109 (1973), held that a cause of action is available against a municipal corporation in the absence of 42 U.S.C. § 1983, if a cause of action is stated under 28 U.S.C. § 1331 or § 1343, as it is stated in the petitioner's amended complaint (A-3: ¶ 7 of the Appendix).

This case also included pendent State claims under the same cause of action and falls within the ambit of this Court's decisions in Hagans v. Lavine, 415 U.S. 528 (1974) and United Mine Workers v. Gibbs, 383 U.S. 715, 725, 86 S.Ct. 1130, 1138, 16 L.Ed.2d 218 (1966), where the plaintiffs were allowed to be heard on the pendent State claims

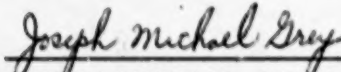
where the Constitution was violated.

By ignoring the above arguments, the District Court and the Third Circuit have sanctioned the arbitrary arrest and detention of the petitioner by Philadelphia policemen and have denied him redress of his grievance in the federal court for serious Fourth Amendment violations.

CONCLUSION

For these reasons, which include serious Fourth Amendment violations and the important question of law, a Writ of Certiorari should issue to review the judgment of the Third Circuit Court of Appeals.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I, Joseph Michael Grey, the Petitioner in this case, have mailed three true and correct copies of the foregoing Petition for Writ of Certiorari to the attorney of record: Jill A. Douthett, Esq., 1580 Municipal Services Building, 15th Street & J.F.Kennedy Boulevard, Philadelphia, Pennsylvania 19107, for Respondents on this 30th day of December, 1982 by United States Certified Mail with return receipt requested.

BY: Joseph Michael Grey

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